

TONGA 2019 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy. The Legislative Assembly, a parliamentary body consisting of 17 popularly elected members and nine nobles selected by their peers, elects the prime minister. Following the November 2017 election, which international observers characterized as generally free and fair, Prime Minister Samuela ‘Akilisi Pohiva was returned to office for a second term. After Pohiva’s death in September, the Legislative Assembly elected Pohiva Tu’i’onetoa to replace him. While Tu’i’onetoa and his cabinet are responsible for most government functions, King Tupou VI, the nobility, and their representatives retain significant authority.

The Tonga Police Force maintains internal security and reports to the Ministry of Police and Fire Services. Civilian authorities maintained effective control over the security forces.

Significant human rights issues included: corruption; and a law criminalizing consensual same-sex sexual conduct between adults that remains on the books although it is not enforced.

The government took steps to prosecute officials who committed abuses. There was one case of torture, which the government took steps to address.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices. There was one case of torture reported during the year. In August a prisoner was acquitted of several crimes after a judge found he had confessed only after prison officers subjected him to a beating. Disciplinary action was initiated against the officers and continued as of year's end.

Prison and Detention Center Conditions

There was one report regarding prison or detention-center conditions, a beating by prison officials, that raised human rights concerns.

Physical Conditions: In 2018 government sources acknowledged that Hu'atolitoli, a prison housing persons with mental disabilities, was not adequately equipped to treat them. A government official stated the prison was adequately equipped.

Administration: There were no reports authorities did not allow prisoners and detainees access to visitors or religious observance. Church leaders visited inmates approximately four to six times a week.

Independent Monitoring: The government permitted monitoring visits by international human rights observers. In February a UN Committee against Torture delegation visited the main prison.

Improvements: The government completed the Hu'atolitoli facility for persons with mental disabilities. In February, 15 male prisoners were admitted to it.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these requirements.

Arrest Procedures and Treatment of Detainees

Police may arrest suspects without a warrant during the commission of a crime; otherwise, authorities apprehend suspects with warrants issued by a local magistrate. In either case authorities brought those arrested before a local magistrate within 24 hours, including on weekends and holidays, for judicial determination of the legality of the detention. Authorities promptly informed arrested persons of charges against them. The law provides for a functioning bail system. The constitution provides the right to initiate habeas corpus proceedings.

Access to arrested persons by counsel, family, and others may be restricted, but authorities generally facilitated access. No legal aid framework existed to provide services for the indigent. Accused persons must generally represent themselves if they cannot afford legal counsel, although in more serious cases the judge may, but is not required to, appoint a pro bono lawyer.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality.

Trial Procedures

The constitution provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. Although unavailability of judges, witnesses, or lawyers could delay cases, legal authorities processed most cases without undue delay. Defendants are presumed innocent and cannot be compelled to testify or confess guilt. Authorities inform them promptly and in detail of charges, and free interpretation is available if necessary. Defendants may present witnesses and evidence, confront witnesses against them, and appeal convictions. They have the right to be present at their trials, consult with an attorney of their choice in a timely manner, and have adequate time and facilities to prepare a defense. There is no provision for public defenders, but local lawyers accepted pro bono cases on an ad hoc basis. Defendants have free access to an interpreter in court, if needed.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Citizens may seek redress through domestic courts for any violation of a human right provided for in the law.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution prohibits such actions, and there were no reports that the government failed to respect these prohibitions.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides for freedom of expression, including for the press, and the government generally respected these rights. An independent press, an effective judiciary, and a functioning democratic political system generally combined to promote freedom of expression, including for the press.

Press and Media, Including Online Media: Independent media were active and expressed a wide variety of views without restriction, although some self-censorship occurred.

Censorship or Content Restrictions: Media outlets reported on political developments and high-profile court cases, but privately owned media exercised self-censorship regarding high-profile individuals. The board of state-owned Tonga Broadcasting Commission (TBC) directed that board-appointed censors review all TBC programming prior to broadcast.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. Workplaces and internet cafes provided internet access, but most homes did not have internet access.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association

The constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

e. Internally Displaced Persons

Not applicable.

f. Protection of Refugees

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection to refugees, asylum seekers, stateless persons, or other persons of concern.

Access to Asylum: The law does not provide for the formal granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. The principal immigration officer has wide discretionary powers under immigration laws and may allow noncitizens to remain in the country, including on humanitarian grounds.

g. Stateless Persons

Not applicable.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide citizens the ability to choose their government in free and fair periodic elections held by secret ballot, and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: The country held its most recent election in November 2017 after the king dissolved parliament. International observers deemed the parliamentary election to be generally free and fair. Samuela 'Akilisi Pohiva was

re-elected as prime minister in December 2017. After Pohiva's death in September, the Legislative Assembly elected Pohiva Tu'i'onetoa prime minister.

Parliament has 26 elected members. Of these, citizens directly elect 17, and the 33 hereditary nobles elect nine of their peers. Parliament elects the prime minister, who appoints the cabinet. The prime minister may select up to four cabinet members from outside parliament. The law accords these cabinet members parliamentary seats for the duration of their tenure in the cabinet.

The king retains significant powers, such as to withhold his assent to laws (with no possibility of parliamentary override) and to dissolve parliament.

Participation of Women and Minorities: No laws limit participation of women or members of minority groups in the political process, and they did participate. A variety of institutional and cultural factors kept women's representation low. Among these were the reservation of nine seats in parliament for nobles, all of whom are men; continuing male domination of informal local government systems, which deny women "entry-level" positions in politics; and cultural attitudes across the population about women's proper roles and competence. The rate of registration to vote among women is the same as the rate among men, and women have the same legal rights to run for election. Voters elected two women to parliament in the November 2017 election, and several women were elected to local offices in 2016, suggesting incremental change. A woman may become queen, but the constitution forbids women from inheriting hereditary noble titles or becoming chiefs.

There were no members of minority ethnic groups in the government or parliament.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented the law effectively. There were reports of government corruption during the year.

Corruption: In September the Attorney General's Office submitted a proposal for a joint trial of former prime minister Lord Tu'ivakano, arrested in March 2018, and two others on charges including passport offenses, money laundering, and bribery in connection with the issuance of a passport to a Chinese national and possibly

other matters. The defense opposed the submission by the Attorney General's Office to include all charges in one trial. The case was pending as of year's end.

The Office of the Auditor General reports directly to the Legislative Assembly with the aim to enhance accountability and transparency in all government activities and improve public-sector performance. The Office of the Ombudsman is empowered to investigate official corruption. Both entities actively collaborated with other government agencies but were not considered by civil society groups to be independent of political control, operationally efficient, or sufficiently resourced.

Financial Disclosure: No law requires income and asset disclosure by appointed or elected officials.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views. The Office of the Ombudsman oversees the rights of every citizen in the country, including members of the public service and vulnerable members of society such as women, children, prisoners, and persons with disabilities.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: Rape is punishable by a maximum of 15 years in prison. The law recognizes spousal rape. The law makes domestic violence a crime punishable by a maximum of 12 months in prison, a fine of Tongan pa'anga (TOP) 2,000 (\$860), or both. Repeat offenders face a maximum of three years in prison or a maximum fine of TOP 10,000 (\$4,300). The law provides for protection from domestic violence, including protection orders; clarifies the duties of police; and promotes the health, safety, and well-being of domestic-violence victims.

Police investigated reported rape cases, and the government prosecuted these cases under the law. In February, for example, two male teenagers were sentenced to seven and eight years, respectively, for raping a woman. The police domestic-

violence unit has a “no-drop” policy in complaints of domestic assault, and once filed, domestic-violence cases cannot be withdrawn and must proceed to prosecution in the magistrates’ courts. The Ministry of Police, local communities, churches, youth groups, other nongovernment organizations (NGOs), and the Women and Children Crisis Center (WCCC) have conducted more than 12 training programs for government agencies and civil society groups on issues such as human rights, child abuse, sexual harassment, violence against women, and domestic violence.

As of June, 95 percent of the total cases received by the WCCC in 2019 were victims of domestic violence. Police worked with the National Center for Women and Children as well as with the WCCC to provide shelter for abused women and girls and boys younger than 14 years. Both centers operated a safe house for victims. The WCCC reported a decline in sexual abuse cases involving teenagers ages 14 to 16.

Sexual Harassment: Sexual harassment is not a crime under the law, but physical sexual assault can be prosecuted as indecent assault. Complaints received by the police domestic-violence unit indicated that sexual harassment of women is a common problem.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: Inheritance laws, especially those concerned with land, discriminate against women. Women can lease land, but inheritance rights pass through male heirs only; a male child born out of wedlock has precedence over the deceased’s widow or daughter. If there are no male relatives, a widow is entitled to remain on her husband’s land as long as she does not remarry and remains celibate. The inheritance and land rights laws also reduced women’s ability to access credit and to own and operate businesses.

Discrimination against women with respect to employment and wages occurred (see section 7.d.).

Children

Birth Registration: Individuals acquire citizenship at birth automatically if at least one parent is a citizen. Birth in the country per se does not confer citizenship.

Education: Education to age 18 is compulsory but not, by law, free. There is a policy, however, that provides free education to all children between the ages of six and 14.

Child Abuse: There are laws against child abuse. If a case is reported to police, the child is removed from the parents or guardians and placed in the care of either the WCCC or the National Center for Women and Children while police investigate. The WCCC implemented a variety of child-abuse awareness programs at schools from primary to tertiary levels.

Early and Forced Marriage: The legal minimum age for marriage is 15 years. According to NGOs, child marriages were a result of several factors, including parental pressure, teenage pregnancy, or forced marriage to rapists.

Sexual Exploitation of Children: The minimum age for consensual sex is 15. Violators who sexually abuse children may be charged with “carnal knowledge of a child under age 12,” which carries a maximum penalty of life in prison, or “carnal knowledge of a child under 15,” which carries a maximum penalty of five years in prison. There were anecdotal reports of Tongan children being subjected to sex trafficking. The law prohibits the procurement of women and girls younger than age 21 for commercial sexual exploitation but does not criminalize the procurement of boys for the same. The law also prohibits child pornography with penalties of a maximum fine of TOP 100,000 (\$43,000) or a maximum of 10 years in prison for individuals and a maximum fine of TOP 250,000 (\$108,000) for corporations; however, the use of children younger than age 14 in the production of pornography is not criminally prohibited.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State’s *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

Anti-Semitism

There was no known resident Jewish community, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

Persons with Disabilities

The constitution broadly prohibits discrimination based on disability, but no laws specifically prohibit discrimination against persons with physical, sensory, intellectual, or mental disabilities. There were no legally mandated services or government programs for adults with disabilities, including for building accessibility or access to communications and information.

A Ministry of Education and Training program to bring children with disabilities into primary schools continued during the year. Many school buildings, however, were not accessible to students with physical disabilities, and attendance rates of children with disabilities at all educational levels were lower than those of students without disabilities.

As of September the National Council on Disability and the Ministry of Internal Affairs had implemented a program to provide financial assistance to disabled individuals. The Ministry provides 1,043 qualifying persons TOP 75 (\$32) monthly.

National/Racial/Ethnic Minorities

The law restricts ownership and operation of retail food stores to citizens. Ethnic Chinese who are naturalized Tongan citizens dominated the retail sector in many towns. There were reports of crime and societal discrimination directed at members of the Chinese minority, but the government appropriately investigated and prosecuted reported offenses.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

Sodomy is listed as a crime with a maximum penalty of 10 years in prison, but there were no reports of prosecutions under this provision for consensual sexual conduct between adults. No law specifically prohibits discrimination based on sexual orientation or gender identity or addresses hate crimes. No criminal-justice mechanisms exist to aid in the prosecution of bias-motivated crimes against lesbian, gay, bisexual, transgender, or intersex individuals. Society accepted a subculture of transgender dress and behavior, and a prominent NGO's annual

festival highlighted transgender identities. Social stigma or intimidation may have prevented reporting of incidents of violence or discrimination.

HIV and AIDS Social Stigma

There were no reports of discrimination or violence against persons based on HIV/AIDS status, but social stigma or intimidation may have prevented reporting of incidents of discrimination or violence.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right to form and join independent unions, but the government has not promulgated regulations on the formation of unions, collective bargaining, or the right to strike. No law specifically prohibits antiunion discrimination or provides for reinstatement of workers fired for union activity. There was no dispute resolution mechanism in place specifically for labor disputes, although persons could take cases to court or refer cases to the Office of the Ombudsman. There were no reports of collective bargaining.

Penalties for legal violations incur criminal fines, which are not sufficient to deter violations. Administrative and judicial procedures were subject to lengthy delays and appeals.

The government and employers generally respected freedom of association. Trade unions and a variety of other worker associations exist. For example, the Friendly Islands Teachers Association and the Tonga Nurses Association were legally incorporated as civil society organizations, and the Friendly Island Seafarer's Union Incorporated was affiliated with the International Transport Workers Federation. The Public Service Association acted as a de facto union representing all government employees.

b. Prohibition of Forced or Compulsory Labor

The law does not prohibit all forms of forced or compulsory labor. The government effectively enforced the law. Penalties are sufficient to deter violations. No data was available on government efforts specifically to address forced labor. There were unconfirmed, anecdotal reports of forced labor among women and children in domestic service (see section 7.c.).

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

c. Prohibition of Child Labor and Minimum Age for Employment

No legislation prohibits child labor or specifies a minimum age for employment. There were no reports that child labor existed in the formal wage economy. According to the National Center for Women and Children and other NGOs, some school-age children worked in the informal sector in traditional family activities such as subsistence farming and fishing.

The law does not meet the international standard for the prohibition of child trafficking because it does not specifically prohibit the domestic trafficking of children, nor does it criminally prohibit forced labor, debt bondage, and slavery, unless they involve transnational human trafficking.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

d. Discrimination with Respect to Employment and Occupation

The law does not prohibit discrimination based on any particular personal characteristic, feature, or group affiliation. Discrimination against women in employment and wages occurred. Women participated in the work force at a lower rate than men, were generally employed in lower-skilled jobs, and earned measurably less than men earn.

e. Acceptable Conditions of Work

There is no minimum wage, but the Ministry of Commerce, Consumer, Trade, Innovation, and Labor sets wage-level guidelines. The law stipulates occupational health and safety standards for each sector, such as fisheries and agriculture. These standards are current and appropriate for main industries, and penalties for violating them were sufficient to deter violations. The government did not effectively enforce the law. Workers can remove themselves from situations that endanger health or safety without jeopardizing their employment.

The law does not provide for overtime pay for a workweek of more than 40 hours, but some employers, including some government offices, did pay their workers overtime.

Enforcement of regulations was inconsistent. The Ministry of Commerce, Consumer, Trade, Innovation, and Labor sought to enforce these standards in all sectors, including the informal economy; however, there were an insufficient number of inspectors. Penalties for violations took the form of monetary fines, which were adequate to deter violations.

Few industries exposed workers to significant danger.